

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PLAYTEX PRODUCTS, INC.,

Plaintiff,

-against-

THE PROCTER & GAMBLE COMPANY,

Defendant.

1:08-CV-03417 (WHP) (THK)

DEFENDANT THE PROCTER &
GAMBLE COMPANY'S ANSWER
AND AFFIRMATIVE DEFENSES
TO THE COUNTERCLAIMS OF
PLAINTIFF PLAYTEX
PRODUCTS, INC.

ECF CASE

Defendant, The Procter & Gamble Company ("P&G"), by its attorneys Jones Day, for its answer and affirmative defenses to the counterclaims of Plaintiff Playtex Products, Inc. ("Playtex"), alleges:

PLAYTEX'S COUNTERCLAIMS

1. P&G admits that Playtex alleges its counterclaims arise under the patent laws of the United States, and the Declaratory Judgment provisions of Title 28 U.S.C. §§ 2201 and 2201 [sic]. P&G admits that this Court has subject matter jurisdiction, but otherwise denies the allegations of this paragraph.

2. Admitted.

3. Admitted.

4. P&G hereby refers to and incorporates by reference as if fully set forth herein its allegations in its Counterclaims, and denies the responses and defenses set forth by Playtex.

5. P&G admits that it alleges in its Counterclaims that Playtex has infringed and continues to infringe United States Patent No. 7,081,110 entitled "Applicator Having An

Indented Fingergrasp With Raised Portions” (the “’110 patent”), but otherwise denies the allegations of this paragraph.

6. Admitted.

FIRST COUNTERCLAIM FOR RELIEF

(Declaratory Judgment Of Non-Infringement Of The ’110 Patent)

7. P&G hereby refers to and incorporates by reference as if fully set forth herein its answers to the allegations of paragraphs 1-6 of Playtex’s counterclaims.

8. Denied.

9. Denied.

SECOND COUNTERCLAIM FOR RELIEF

(Declaratory Judgment Of Invalidity Of The ’110 Patent)

10. P&G hereby refers to and incorporates by reference as if fully set forth herein its answers to the allegations of paragraphs 1-9 of Playtex’s counterclaims.

11. Denied.

12. Denied.

PRAYER FOR RELIEF

P&G denies that Playtex is entitled to any relief whatsoever for its counterclaims.

P&G’S AFFIRMATIVE DEFENSES

First Affirmative Defense

Playtex’s Claim fails to state a claim for which relief can be granted.

PRAYER FOR RELIEF

P&G respectfully prays that this Court enter judgment in its favor and against Playtex as follows:

A. Dismissing with prejudice Playtex’s Counterclaims in their entirety;

- B. Denying all remedies and relief sought by Playtex in its Counterclaims;
- C. Finding that this case is exceptional and award P&G its costs and reasonable attorneys' fees incurred in this action as provided by 35 U.S.C. § 285; and/or
- D. Granting P&G such other and further relief that this Court deems just and proper.

JURY DEMAND

P&G demands a trial by jury for all issues so triable.

Dated: June 5, 2008

Jones Day

By: s/ Clark Craddock

Kenneth R. Adamo (KA-6210)
David M. Maiorana (*pro hac vice*)
Jones Day
901 Lakeside Ave.
Cleveland, Ohio 44114
Telephone: (216) 586-3939
kradamo@jonesday.com
dmaiorana@jonesday.com

Clark Craddock (CC-9165)
Jones Day
222 E. 41st Street
New York, New York 10017-6702
Telephone: (212) 326-3939
ccraddock@jonesday.com

Attorneys for Defendant
The Procter & Gamble Company

CERTIFICATE OF SERVICE

Clark Craddock, a lawyer admitted to the bar of this Court, certifies under penalty of perjury pursuant to 28 U.S.C. § 1746, that on June 5, 2008, she caused the attached DEFENDANT THE PROCTER & GAMBLE COMPANY'S ANSWER AND AFFIRMATIVE DEFENSES TO THE COUNTERCLAIMS OF PLAINTIFF PLAYTEX PRODUCTS, INC. to be served electronically upon:

Matthew B. Lehr
matthew.lehr@dpw.com
Davis Polk & Wardwell
450 Lexington Avenue
New York, New York 10017

Diem-Suong T. Nguyen
suong.nguyen@dpw.com

Veronica C. Abreu
veronica.abreu@dpw.com

and

David J. Lisson
david.lisson@dpw.com
Davis Polk & Wardwell
1600 El Camino Real
Menlo Park, California 94025

Dated: June 5, 2008

s/ Clark Craddock
Clark Craddock